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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,470	08/20/2003	Elizabeth Chelsea Teich		5957
4988	7590	08/11/2004		
ALFRED M. WALKER 225 OLD COUNTRY ROAD MELVILLE, NY 11747-2712			EXAMINER BLAKE, CAROLYN T	
			ART UNIT 3724	PAPER NUMBER
DATE MAILED: 08/11/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/644,470

Applicant(s)

TEICH ET AL.

Examiner

Carolyn T Blake

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☒ Claim(s) 1,3,4, and 6 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>20040730</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Specification

1. The abstract of the disclosure is objected to because of minor informalities. The phrase "teich-musgnug bagel scoop appl" on line 18 should be deleted. Correction is required.
2. The disclosure is objected to because of informalities. On lines 24-25 of page 5, it is stated that the device has three functions. However, the applicant only explicitly states two functions (page 8). Appropriate correction is required.

Claim Objections

3. Claims 1, 3, 4, and 6 are objected to because of informalities. Regarding claim 1, the phrase "said shallow elliptical spoon-shaped closed combined blade and scoop structure" on lines 9-10 lacks proper antecedent. It should be changed to - - said concave closed combined blade and scoop structure - -.

Regarding claim 3, the phrase "said bagel scoop" on lines 20-21 lacks proper antecedent. It should be changed to - - said manually held scoop - -.

Regarding claim 4, the claim fails to additionally limit the subject matter of the proceeding claim according to 37 CFR 1.75 (c). It is redundant.

Regarding claim 6, the phrase "said manually held bagel scoop" on line 7 lacks proper antecedent. It should be changed to - - said manually held scoop - -.

Appropriate corrections are required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Green (3,121,951).

Regarding claim 1, Green discloses a manually held scoop as claimed (see FIG 1 and 3-5). The scoop includes a longitudinally extending handle (11) with a closed concave blade and scoop structure at one end (13). Furthermore, the blade/scoop structure has a downward curvature (FIG 1b). Green also discloses the use of a shallow (col. 2, lines 51-52), elliptical (col. 2, line 55), spoon-shaped structure (col. 3, lines 21-22) that is capable of removing the core of a food product. Specifically, Green discusses the use of removing the cores (pits) of fruit (col. 2, lines 56-57).

Regarding claim 2, the blade/scoop structure of the Green device is serrated with teeth (14) for scraping and scooping food product residue (col. 1, lines 67-68). These teeth are located at a leading edge of the blade/scoop structure (FIG 1a).

Regarding claim 3, the scoop of the Green device has an auxiliary scraper on the opposite end of the blade/scoop structure. The end of the handle (11) is capable of scraping.

Regarding claim 4, the blade/scoop structure of the Green device is shallow (col. 2, lines 51-52), elliptical (col. 2, line 55), and spoon-shaped (col. 3, lines 21-22).

Regarding claim 5, the blade/scoop structure of the Green device extends in a downward curvature from a longitudinally extending axis of the handle (FIG 1b). It is noted that the phrase "downward curvature" is interpreted to mean extending at an angle less than 180 degrees from the longitudinal axis of the handle.

Regarding claim 6, the Green device is capable of providing a resting area for the lateral portion of the user's palm when operating the scoop. Although Green does not specifically disclose the use of an auxiliary scraper for providing a palm rest, the auxiliary scraper (handle 11) would inherently rest on the user's palm while the device is in use.

Regarding claim 7, the Green device is capable of being used to scoop the core from any food product, including a sliced toroidal baked bagel. Green specifically discusses the use of removing the cores of fruit (col. 2, lines 56-57), but also discloses the scoop for assistance in eating "melon, tomato, potato, peach, etc." (col. 2, lines 48-49) or desserts (col. 2, line 72).

Regarding claim 8, all of the elements have been previously discussed.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stone (1,461,686) discloses a spoon with a scraper on the opposite end. Glover (675,475), Schuyler (868,583), Leach (742,685), and Mars (5,060,386) all disclose various spoons with teeth on an edge.

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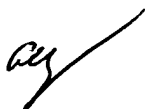
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn T Blake whose telephone number is (703) 305-0390. The examiner can normally be reached on Monday to Friday, 8:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N Shoap can be reached on (703) 308-1082. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CB
August 3, 2004



Allan N. Shoap
Supervisory Patent Examiner
Group 3700